

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-876X

R.J. CORMAN EQUIPMENT COMPANY, LLC—ABANDONMENT EXEMPTION—IN
JOHNSON, MAGOFFIN AND BREATHITT COUNTIES, KY

STB Docket No. AB-875X

R.J. CORMAN RAILROAD COMPANY/BARDSTOWN LINE—DISCONTINUANCE OF
SERVICE EXEMPTION—IN JOHNSON, MAGOFFIN AND BREATHITT COUNTIES, KY

Decided: January 5, 2006

By decision and notice of interim trail use or abandonment (NITU) served on December 23, 2004, the Board granted R.J. Corman Equipment Company, LLC (RJCE) and R.J. Corman Railroad Company/Bardstown Line (RJCR) (collectively, Corman) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903. RJCE sought to abandon, and RJCR sought to discontinue service over, a line of railroad known as the Dawkins Line, extending from milepost 0.05 at Dawkins, KY, to the end of the track at milepost 36.13 near Evanston, KY, a distance of approximately 36.08 miles in Johnson, Magoffin and Breathitt Counties, KY. The exemption was granted subject to public use, environmental, and standard employee protective conditions, and the Board authorized a 180-day period for Judge Executive Roger “Tucker” Daniel and the Johnson County Fiscal Court, Judge Executive Bill May and the Magoffin County Fiscal Court, and Judge Executive Lewis Warrix and the Breathitt County Fiscal Court (collectively, the Counties), to negotiate an interim trail use/rail banking agreement with RJCE under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The negotiating period under the NITU was extended by decision served on June 30, 2005, until December 23, 2005.

On December 20, 2005, Corman filed a request to further extend the NITU negotiating period until June 20, 2006. Corman states that it and the Big Sandy Area Development District (Big Sandy ADD)¹ continue to pursue an interim trail use agreement. It adds, however, that the agency must obtain funding to perform initial feasibility studies and it has asked the railroad to request an extension of time. Corman states that it is agreeable to the extension and requests that

¹ By letter filed on January 4, 2006, Corman explains that the Counties have arranged for Big Sandy ADD, an organization of local governmental officials and citizens, to pursue this rails-to-trails project on their behalf. They add that, if the parties are able to reach a trails agreement, the Counties will acquire and develop the right-of-way and assume financial responsibility for the trail.

the deadline for entering into a trail use agreement, and for filing a notice of consummation, be extended to June 20, 2006.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). An extension of the negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act.² Accordingly, the NITU negotiating period will be extended to June 20, 2006.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Corman's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until June 20, 2006.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

² See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).